

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

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CHAPTER 247

SENATE BILL 1119

AN ACT

AMENDING SECTIONS 8-514, 8-536, 8-538, 8-824, 8-829 AND 8-845, ARIZONA
REVISED STATUTES; RELATING TO CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-514, Arizona Revised Statutes, is amended to
3 read:

4 8-514. Placement in foster homes

5 A. Subject to the provisions of section 8-514.01, the division or a
6 licensed child welfare agency if so authorized in its license, may place a
7 child in a licensed foster home for care or for adoption.

8 B. THE DEPARTMENT SHALL PLACE A CHILD IN THE LEAST RESTRICTIVE TYPE OF
9 PLACEMENT AVAILABLE, CONSISTENT WITH THE NEEDS OF THE CHILD. THE ORDER FOR
10 PLACEMENT PREFERENCE IS AS FOLLOWS:

11 (a) WITH A PARENT.

12 (b) WITH A GRANDPARENT.

13 (c) IN KINSHIP CARE WITH ANOTHER MEMBER OF THE CHILD'S EXTENDED
14 FAMILY, INCLUDING A PERSON WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE CHILD.

15 (d) IN LICENSED FAMILY FOSTER CARE.

16 (e) IN THERAPEUTIC FOSTER CARE.

17 (f) IN A GROUP HOME.

18 (g) IN A RESIDENTIAL TREATMENT FACILITY.

19 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, THE ORDER FOR
20 PLACEMENT PREFERENCE OF A NATIVE AMERICAN CHILD IS AS FOLLOWS:

21 (a) WITH A MEMBER OF THE CHILD'S EXTENDED FAMILY.

22 (b) IN A LICENSED FAMILY FOSTER HOME APPROVED OR SPECIFIED BY THE
23 CHILD'S TRIBE.

24 (c) IN AN INDIAN FOSTER HOME LICENSED OR APPROVED BY AN AUTHORIZED
25 NON-INDIAN LICENSING AUTHORITY.

26 (d) IN AN INSTITUTION APPROVED BY THE INDIAN TRIBE OR OPERATED BY AN
27 INDIAN ORGANIZATION THAT HAS A PROGRAM SUITABLE TO MEET THE INDIAN CHILD'S
28 NEEDS PURSUANT TO 25 UNITED STATES CODE CHAPTER 21.

29 ~~B.~~ D. At the time of placement there shall be presented to the foster
30 parents, by the agency or division placing the child, a written summary of
31 known, unprivileged, information regarding the child, including but not
32 limited to:

33 1. Demographic information.

34 2. Type of custody and previous placement.

35 3. Pertinent family information including but not limited to the names
36 of family members who, by court order, may not visit the child.

37 4. Known or available medical history including but not limited to:

38 (a) Allergies.

39 (b) Immunizations.

40 (c) Childhood diseases.

41 (d) Physical handicaps.

42 (e) Other idiosyncrasies.

43 (f) The child's last doctor, if known.

1 5. A summary of the child's history of adjudication on acts of
2 delinquency, as may be public record and available in the file of the clerk
3 of the superior court.

4 ~~E.~~ E. The responsibility of the agency or the division for a child
5 placed in a foster home shall be defined in writing and accepted by the
6 person receiving the child. The agency or division shall make available to
7 the foster parents a method of acquiring emergency information that may be
8 necessary to deal with situations that may arise pursuant to their
9 responsibilities as foster parents.

10 ~~F.~~ F. Every foster home shall maintain a record of the children
11 received, which shall include facts in regard to the children and their care
12 and shall be in the form and kept in the manner prescribed by the division.

13 Sec. 2. Section 8-536, Arizona Revised Statutes, is amended to read:

14 8-536. Social study before disposition; contents

15 A. ~~Upon~~ ON the filing of a petition, the court shall order that the
16 department, an agency or another person selected by the court conduct or
17 cause to be conducted a complete social study and that a report in writing of
18 such study be submitted to the court ~~prior to~~ BEFORE a hearing. The court
19 may order any additional social study it deems necessary. The social study
20 shall include the circumstances of the petition, the social history, the
21 present condition of the child and parent, proposed plans for the child, and
22 ~~such other facts as may be~~ pertinent to the parent-child relationship. The
23 report submitted shall include a specific recommendation and the reasons
24 ~~therefor~~ as to whether or not the parent-child relationship should be
25 terminated.

26 B. IF THE PROPOSED PLANS FOR THE CHILD DO NOT INCLUDE PLACING THE
27 CHILD WITH A GRANDPARENT OR ANOTHER MEMBER OF THE CHILD'S EXTENDED FAMILY
28 INCLUDING A PERSON WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE CHILD, THE
29 REPORT SHALL INCLUDE SUFFICIENT INFORMATION FOR THE COURT TO DETERMINE
30 WHETHER SUCH PLACEMENT IS IN THE CHILD'S BEST INTERESTS.

31 ~~B.~~ C. The court may waive the requirement of the social study ~~when~~ IF
32 the court finds that to do so is in the best interest of the child.

33 Sec. 3. Section 8-538, Arizona Revised Statutes, is amended to read:

34 8-538. Court order; form; contents

35 A. Every order of the court terminating the parent-child relationship
36 or transferring legal custody or guardianship of the person of the child or
37 providing for protective supervision of the child shall be in writing and
38 shall recite the findings ~~upon~~ ON which ~~such~~ THE order is based, including
39 findings pertaining to PLACEMENT OF THE CHILD AND the court's jurisdiction.
40 ~~Such~~ THE order ~~shall be~~ IS conclusive and binding on all persons from the
41 date of entry.

42 B. If the court finds grounds for the termination of the parent-child
43 relationship it shall terminate ~~such~~ THE relationship and take one of the
44 following courses of action:

1 1. Appoint an individual as guardian of the ~~child's person~~ CHILD.
2 2. Appoint an individual as THE CHILD'S guardian ~~of the child's person~~
3 and vest legal custody in another individual or in an authorized agency.
4 C. IF THE COURT FINDS THAT PLACEMENT WITH A GRANDPARENT OR ANOTHER
5 MEMBER OF THE CHILD'S EXTENDED FAMILY INCLUDING A PERSON WHO HAS A
6 SIGNIFICANT RELATIONSHIP WITH THE CHILD IS NOT IN THE CHILD'S BEST INTERESTS,
7 THE COURT SHALL MAKE SPECIFIC WRITTEN FINDINGS IN SUPPORT OF ITS DECISION.
8 ~~C.~~ D. The court shall also make an order fixing responsibility for
9 the child's support. The parent-child relationship may be terminated with
10 respect to one parent without affecting the relationship between the child
11 and the other parent.
12 ~~D.~~ E. ~~Where~~ IF the court does not order termination of the
13 parent-child relationship, it shall dismiss the petition, provided that ~~where~~
14 IF the court finds that the best interests of the child require substitution
15 or supplementation of parental care and supervision, the court shall make
16 such orders as it deems necessary.
17 Sec. 4. Section 8-824, Arizona Revised Statutes, is amended to read:
18 8-824. Preliminary protective hearing; probable cause;
19 appointment of counsel
20 A. The court shall hold a preliminary protective hearing to review the
21 taking into temporary custody of a child pursuant to section 8-821 not fewer
22 than five days nor more than seven days after the child is taken into
23 custody, excluding Saturdays, Sundays and holidays. If clearly necessary to
24 prevent abuse or neglect, to preserve the rights of a party or for other good
25 cause shown, the court may grant one continuance that does not exceed five
26 days.
27 B. The following persons shall be present at the preliminary
28 protective hearing:
29 1. The child's parents or guardian, unless they cannot be located or
30 they fail to appear in response to the notice.
31 2. Counsel for the parents if one has been requested or retained.
32 3. The child's guardian ad litem or attorney.
33 4. The protective services worker.
34 5. Counsel for the protective services worker.
35 C. If the court finds that it is in the best interests of the child,
36 the court may allow the following to be present at the preliminary protective
37 hearing:
38 1. The child.
39 2. Any relative or other interested person with whom the child IS OR
40 might be placed as described in section 8-845, subsection A.
41 3. Witnesses called by the parties.
42 4. An advocate or interested person as requested by the parent or
43 guardian.
44 5. Other persons who have knowledge of or an interest in the welfare
45 of the child.

1 D. At the hearing, the court shall advise the parent or guardian of
2 the following rights:

3 1. The right to counsel, including appointed counsel if the parent or
4 guardian is indigent.

5 2. The right to cross-examine all witnesses who are called to testify
6 against the parent or guardian.

7 3. The right to trial by court on the allegations in the petition.

8 4. The right to use the process of the court to compel the attendance
9 of witnesses.

10 E. At the hearing, the court:

11 1. Shall receive a report of any agreement reached pursuant to section
12 8-823, subsection D. The report may be made orally.

13 2. Shall provide an opportunity for the child's parent or guardian, if
14 present, and any other person who has relevant knowledge, to provide relevant
15 testimony.

16 3. May limit testimony and evidence that is beyond the scope of the
17 removal of the child, the child's need for continued protection, placement,
18 visitation and services to be provided to the child and family.

19 4. May take into consideration as a mitigating factor the
20 participation of the parent or guardian in the healthy families ~~pilot~~ program
21 established by section 8-701.

22 5. Shall take into consideration as a mitigating factor the
23 availability of reasonable services to the parent or guardian to prevent or
24 eliminate the need for removal of the child and the effort of the parent or
25 guardian to obtain and participate in these services.

26 6. Shall inform the child's parent or guardian that the hearing may
27 result in further proceedings to terminate parental rights.

28 7. Shall give paramount consideration to the health and safety of the
29 child.

30 8. SHALL REVIEW EVIDENCE THAT THE DEPARTMENT IS ATTEMPTING TO IDENTIFY
31 AND ASSESS PLACEMENT OF THE CHILD WITH A GRANDPARENT OR ANOTHER MEMBER OF THE
32 CHILD'S EXTENDED FAMILY INCLUDING A PERSON WHO HAS A SIGNIFICANT RELATIONSHIP
33 WITH THE CHILD.

34 F. The petitioner has the burden of presenting evidence as to whether
35 there is probable cause to believe that continued temporary custody is
36 clearly necessary to prevent abuse or neglect pending the hearing on the
37 dependency petition.

38 G. If the child is in the temporary custody of the department, the
39 department shall submit not later than the day before the hearing a written
40 report to the court and the parties that states:

41 1. The reasons the child was removed from the parent's or guardian's
42 custody.

43 2. Any services that have been provided to the child or the child's
44 parent or guardian to prevent removal.

45 3. The need, if any, for continued temporary custody.

1 4. The types of service needed to facilitate the return of the child
2 to the custody of the child's parents or guardian.

3 5. IF THE CHILD IS NOT PLACED WITH A GRANDPARENT, whether the child
4 has any relatives or other interested parties as described in section 8-845,
5 subsection A who may be able and willing to take temporary custody.

6 6. Any services that are requested by the parent or guardian but that
7 are not provided and the reasons the services were not provided.

8 7. Any efforts made to place siblings together, and if they are not
9 placed together, the reasons why.

10 8. Any efforts made to facilitate communications among siblings.

11 9. A proposal for visitation and the results of any visitation that
12 has occurred since the child was removed.

13 10. A proposed case plan for services to the family.

14 H. The parent or guardian shall state whether the parent or guardian
15 admits or denies the allegations in the petition filed pursuant to section
16 8-841. If the parent or guardian admits or does not contest the allegations
17 in the petition, the court shall determine that the parent or guardian
18 understands the rights described in subsection D of this section and that the
19 parent or guardian knowingly, intelligently and voluntarily waives these
20 rights.

21 I. At the hearing, IF THE CHILD IS NOT RETURNED TO THE PARENT OR
22 GUARDIAN, the court shall enter orders regarding the placement of the child
23 pending the determination of the dependency petition and visitation, if
24 any, ~~if the child is not returned to the parent or guardian.~~ The court shall
25 also determine if the tasks and services set forth in the case plan are
26 reasonable and necessary to carry out the case plan.

27 Sec. 5. Section 8-829, Arizona Revised Statutes, is amended to read:
28 8-829. Judicial determinations; timing; documentation

29 A. If a child has been removed from the child's home, the court shall
30 make protecting the child from abuse or neglect the first priority and shall
31 make the following determinations within the following time periods:

32 1. In the court's first order that sanctions the removal, whether
33 continuation of the child's residence in the home would be contrary to the
34 welfare of the child. This order may be the temporary order that the court
35 issues on the filing of a dependency petition.

36 2. AT THE PRELIMINARY PROTECTIVE HEARING, WHETHER THE DEPARTMENT MADE
37 ATTEMPTS TO IDENTIFY AND ASSESS PLACEMENT WITH THE CHILD'S GRANDPARENT OR
38 ANOTHER MEMBER OF THE CHILD'S EXTENDED FAMILY INCLUDING A PERSON WHO HAS A
39 SIGNIFICANT RELATIONSHIP WITH THE CHILD.

40 ~~2-~~ 3. Within sixty days after the child is removed from the child's
41 home, whether reasonable efforts have been made to prevent removal of the
42 child or whether it was reasonable to make no efforts to prevent removal of
43 the child.

44 4. IF THE CHILD IS NOT PLACED WITH A GRANDPARENT OR ANOTHER MEMBER OF
45 THE CHILD'S EXTENDED FAMILY INCLUDING A PERSON WHO HAS A SIGNIFICANT

1 RELATIONSHIP WITH THE CHILD WITHIN SIXTY DAYS AFTER THE CHILD IS REMOVED FROM
2 THE CHILD'S HOME, WHY SUCH PLACEMENT IS NOT IN THE BEST INTERESTS OF THE
3 CHILD. THE PETITIONER HAS THE BURDEN OF PRESENTING EVIDENCE THAT SUCH
4 PLACEMENT IS NOT IN THE CHILD'S BEST INTERESTS AT THE FIRST COURT HEARING
5 THEREAFTER.

6 ~~3-~~ 5. Within twelve months after the child is removed from the
7 child's home and once every twelve months thereafter, whether reasonable
8 efforts have been made to finalize the existing permanency plan.

9 B. The court shall make each determination described in subsection A
10 on a case-by-case basis and shall set forth in its written order the specific
11 factual basis for each determination. In making its determination, the court
12 shall consider documentation that is reasonably available at the time of the
13 determination.

14 Sec. 6. Section 8-845, Arizona Revised Statutes, is amended to read:
15 8-845. Disposition hearing

16 A. After receiving and considering the evidence on the proper
17 disposition of the case, the court may enter orders awarding a dependent
18 child as follows:

19 1. To the care of the child's parents, subject to the supervision of
20 the department of economic security.

21 2. TO A GRANDPARENT OR ANOTHER MEMBER OF THE CHILD'S EXTENDED FAMILY
22 INCLUDING A PERSON WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE CHILD, UNLESS
23 THE COURT HAS DETERMINED THAT SUCH PLACEMENT IS NOT IN THE CHILD'S BEST
24 INTERESTS.

25 ~~2-~~ 3. To a suitable institution.

26 ~~3-~~ 4. To an association willing to receive the child.

27 ~~4-~~ 5. To a reputable citizen of good moral character.

28 ~~5-~~ 6. To an appropriate public or private agency licensed to care for
29 children.

30 ~~6-~~ 7. To a suitable school.

31 ~~7. To maternal or paternal relatives, if they are physically and~~
32 ~~financially able to provide proper care.~~

33 8. To supervision under the independent living program established
34 pursuant to section 8-521.

35 9. To any adult as a permanent guardian pursuant to article 5 of this
36 chapter.

37 B. In reviewing the status of the child and in determining its order
38 of disposition, the court shall consider the health and safety of the child
39 as a paramount concern and the following criteria:

40 1. The goals of the placement and the appropriateness of the case
41 plan.

42 2. The services that have been offered to reunite the family.

43 3. If returning the child home is not likely, the efforts that have
44 been or should be made to evaluate or plan for other permanent placement
45 plans.

1 C. The court shall review the permanent plan that has been established
2 for the child. In reviewing the status of the child, the court, insofar as
3 possible, shall seek to reunite the family. If the court does not order
4 reunification of the family, the court shall order a plan of adoption or
5 another permanent plan that is in the child's best interest.

6 D. Notwithstanding subsection C of this section, reasonable efforts to
7 place a child for adoption may be made concurrently with reasonable efforts
8 to reunify the family.

APPROVED BY THE GOVERNOR MAY 2, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2006.